

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1036 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

VASANTLAL MANSUKHLAL

Appearance:

Shri M.A.Bhukari, Additional Public Prosecutor, for
the Appellant.

Shri P.S.Champaneri, Advocate, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 09/10/96

ORAL JUDGEMENT

Inadequacy of the sentence imposed by the learned

Judicial Magistrate (First Class) at Vadhvan on the respondents herein by his judgment and order passed on 4th September 1985 in Criminal Case No.229 of 1984 is questioned in this appeal by the prosecution agency under Section 377 of the Code of Criminal Procedure, 1973 (the Code for brief). By his impugned judgment and order, the learned trial Magistrate, after convicting the respondents herein of the offence punishable under Section 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 (the Act for brief) on his pleading guilty, sentenced him to imprisonment till the rising of the court and fine of Rs.300/- in default simple imprisonment for one month.

2. It is not necessary to set out in detail the facts giving rise to this appeal. It may be sufficient to note that the respondents herein used aluminium-leaf instead of silver-leaf as a decorative for selling sweetmeats in his shop. One part of the sample to the tune of 200 gms. out of the total sample of 600 gms. taken from him was sent to the Public Analyst at Bhuj for analysis. The report of the Public Analyst is at Exh.23 on the record of the trial court. The decorative leaf was found to be that of aluminium and not of silver. Thereupon, the necessary complaint was filed in the Court of the Judicial Magistrate (First class) at Vadhvan charging the respondents herein with the offence punishable under the relevant provisions contained in Section 16 read with Section 7 of the Act. It came to be registered as Criminal Case No.229 of 1984. The charge against the respondents - accused was framed on 23rd January 1985 at Exh.29 on the record of the trial court. Neither respondent - accused pleaded guilty to the charge. They were thereupon tried. The oral testimony of the complainant was recorded at Exh.7 on the record of the case. It appears that, at that stage, on behalf of the accused a pursis at Exh.40 on the record of the trial court was filed on 5th June 1985 in the case and they pleaded guilty to the charge. They prayed for mercy on the ground that they were poor and have many mouths to support and it was their first offence. Thereupon, the learned trial Magistrate framed the charge against them afresh on 5th June 1985 at Exh.41 on the record of the trial court. A fresh plea of both the respondents accused was recorded. Both of them pleaded guilty to the charge. Thereupon, by the judgment and order passed by the learned Judicial Magistrate (First Class) at Vadhvan on 4th September 1985 in Criminal Case No.229 of 1984, both the respondents - accused were convicted of the offence punishable under the relevant provisions contained in Section 16 read with Section 7 of the Act

and were sentenced to imprisonment till the rising of the court and fine of Rs.300/- each failing which simple imprisonment for one month. The inadequacy of the sentence imposed by the learned trial Magistrate on the respondents - accused aggrieved the prosecution agency. It has therefore invoked the appellate jurisdiction of this court by means of this appeal under Section 377 of the Code.

3. On behalf of the respondents, respondent No.1 has filed one affidavit in this case. He has brought on record the death certificate of respondent No.2 herein. He appears to have breathed his last on 27th May 1992. Since the cause against the accused dies with his death, this appeal against respondent No.2 stands abated under Section 394 of the Code.

4. So far as respondent No.1 is concerned, learned Advocate Shri Champaneri for him has submitted that respondent No.1 is entitled to acquittal in this case in view of the ruling of this court in the case of IQBAL MUSABHAI HUNANI v. STATE OF GUJARAT reported in 1993 (1) 34 (1) Gujarat Law Reporter at page 430. Since Section 377 (3) of the Code enables the accused to plead for his acquittal, I have thought it fit to hear the submission of learned Advocate Shri Champaneri for respondent No.1 in the first instance before examining the merits of the appeal preferred by the appellant - State.

5. As pointed out hereinabove, the report of the Public Analyst with respect to the sample analysed by him is at Exh.23 on the record of the trial court. He has found aluminium-leaf to have been used as a decorative to the sweetmeat of burfi sold in the shop belonging to the respondents herein. Nowhere in his report at Exh.23 is found mentioned that such use of aluminium-leaf was injurious to health. It cannot be gainsaid that no standard of decorative leaf to be used for decorating sweetmeats has been prescribed under the Act or the Rules framed thereunder. In that view of the matter, it was necessary for the Public Analyst analysing the sample to have given his opinion whether or not the aluminium-leaf used as a decorative was injurious to health.

6. This court had an occasion to examine use of aluminium-leaf wrapping khajur sold by the accused in the case of IQBAL MUSABHAI (supra). In that case also, the use of aluminium-leaf for decorative purpose in wrapping khajur was not opined to be injurious to health by the Public Analyst in his report. In that view of the matter, conviction of the accused in that case was set

aside by this court at the instance of the accused petitioner. The aforesaid ruling of this court is on all fours applicable in the present case. As pointed out hereinabove, the Public Analyst in his analysis of the sample in question has not opined that the aluminium-leaf used for decorative purpose was injurious to health. In that view of the matter, respondent No.1 would be entitled to acquittal in this case.

7. In view of my aforesaid discussion, the impugned judgment and order of conviction and sentence passed by the learned trial Magistrate cannot be sustained in law. It has to be quashed and set aside. In that view of the matter, the appeal for enhancement will not survive. It has to be dismissed.

8. In the result, this appeal fails. It stands abated qua respondent No.2 herein. It is dismissed qua respondent No.1 herein. The judgment and order of conviction and sentence passed by the learned Judicial Magistrate (First Class) at Vadhvan on 4th September 1985 in Criminal Case No.229 of 1985 is quashed and set aside. Respondent No.1 is acquitted of the offence with which he was charged at trial. The fine, if paid, is ordered to be refunded.

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